

Exhibit A

VirnetX v. Apple

Plaintiff's Motion to Compel Document Production Dkt. 852
June 18, 2020

Apple Announces It Will Break “Always”

4/8/13

iOS 6.1: VPN On Demand does not always initiate a VPN connection

iOS 6.1: VPN On Demand does not always initiate a VPN connection

Products Affected

iPad, iPhone, iPod touch

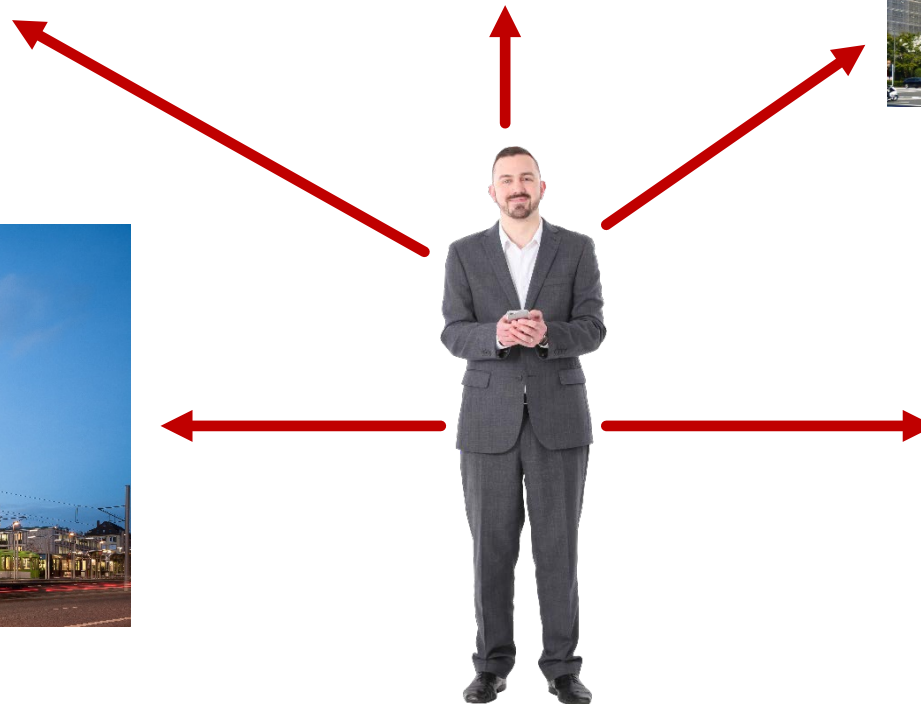
Symptoms

Due to a lawsuit by VirnetX, Apple will be changing the behavior of VPN On Demand for iOS devices using iOS 6.1 and later.

Devices using iOS 6.1 and later with VPN On Demand configured to “Always” will behave as if they were configured with the “Establish if needed” option. The device will establish a VPN On Demand connection only if it is unable to resolve the DNS name of the host it is trying to reach. This change will be distributed in an update later this month.

Dkt. 194-8, Ex. G.

MDM (Mobile Device Managers)



Court Denied Original Motion To Compel Weeks Before Trial But Provided Guidance

The Court **DENIES** VirnetX's Motion to Compel Document Production (Docket No. 194). However, the Court will carefully consider any objections from VirnetX where Apple criticizes a VirnetX witness for not considering specific usage sought by VirnetX in this motion.

Dkt. No. 362

Apple Then Moved For JMOL

VirnetX accordingly failed to prove a single instance in which anyone (whether Apple or anyone else) used redesigned VOD in the very specific way that VirnetX accused as infringing the '135 and '151 patents. JMOL of non-infringement is warranted with respect to those patents.

Dkt. No. 713 at 6 (Defendant Apple, Inc.'s Rule 50(a) Motion for Judgment as a Matter of Law on Non-Infringement)

2016: Apple Highlights Inadequate Survey

15 Q. Okay. Now, is VPN On Demand a feature that a
16 typical customer would set up?

17 A. No.

18 Q. Okay. Why didn't you survey IT professionals when
19 you were looking to get evidence -- responses about VPN
20 On Demand?

21 A. Well, in part because I was doing a consumer
22 survey and in part because there could be some
23 difficulties in surveying IT professionals about their
24 company's security. That's normally something that IT
25 professionals would not want to share with a third party.

1 Q. Okay. Of the people in your survey, how many
2 respondents had used VPN On Demand?

3 A. 2 percent.

4 Q. Okay.

5 MS. HEFFERNAN: Pass the witness.

Jay Direct at 178:15-179:5 (Trial Tr. Feb. 1, 2016)

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2018: Apple Insinuates Only 2% Use Of VPN On Demand

11 Q. And then did you ask those people specific questions
12 about VPN On Demand?

13 A. Yes. If someone connected to a virtual private network,
14 I asked them whether they used Apple's VPN On Demand service to
15 do this.

16 Q. And how many people had?

17 A. 2 percent.

18 Q. So, Dr. Jay, does that complete our discussion of your
19 survey?

20 A. Yes.

Jay Direct at 169:2-20 (P.M. Trial Tr. Apr. 9, 2018)

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2018: Apple Insinuates Only 2% Use Of VPN On Demand

7 Q. But, Dr. Jay, did you ask people whether or not they used
8 VPN On Demand?

9 A. Yes.

10 Q. And what did your survey show about how often -- how many
11 people use VPN On Demand?

12 A. So the people I surveyed include people who worked in
13 businesses and -- because it was a representative sample of
14 people who use Apple devices. And I found only 2 percent used
15 VPN On Demand.

16 Q. Thank you, Dr. Jay.

17 MS. SCHMIDT: I pass the witness.

Jay Re-Direct at 186:7-16 (P.M. Trial Tr. Apr. 9, 2018)

Case 6:12-cv-00335-RWS Document 867-1 Filed 06/22/20 Page 10 of 19 PageID #: 57506

Apple's Purported Reason For A New Trial

15 And, you know, here we have not just
16 evidence on the rates itself that Bakewell presented, that
17 different rates would apply to different features, but
18 there was evidence of different consumer acceptance of
19 those features, different consumer awareness of the
20 features, different marketing materials, highlighting
21 different levels of importance of the two features. And
22 all of that qualitative evidence, in addition to the
23 quantitative evidence should be considered by the jury in
24 determining that the VPN on Demand would have had lower
25 value than \$1.20.

Hearing Tr. April 14, 2020 at 40:15-25

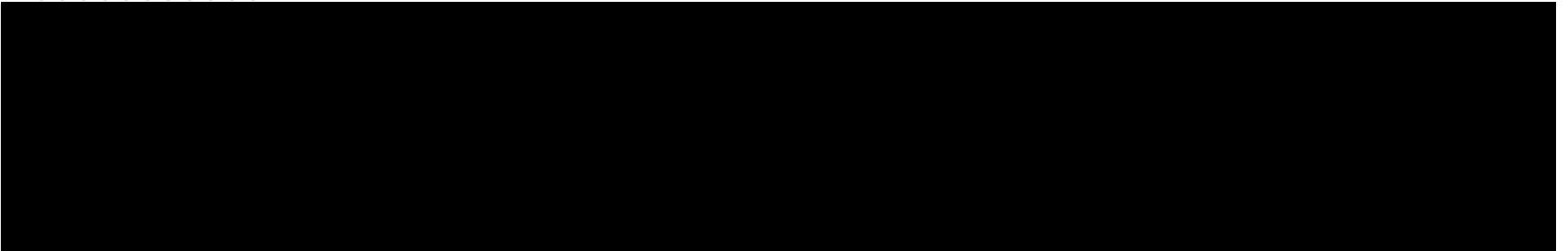
Apple Avoided Knowing The Answer

>>>>>>>>> On Mar 29, 2013, at 8:19 AM, Jeremy Butcher <jbutcher@apple.com>
wrote:

>>>>>>>>>

>>>>>>>>> Hi All,

>>>>>>>>>



Trial Exhibit PX1127

Apple Spent Over \$200k On An Inadequate Survey

13 Let's talk about this case. To date how much
14 has your company billed Apple for the work you or
15 your team has done on this case?

16 A. Okay.

17 MS. HEFFERNAN: Objection, form.

18 A. So Field Research has billed -- for
19 Field Research's own work about, I don't know,
20 approximately [REDACTED] dollars. For Knowledge
21 Networks' work, that would be approximately [REDACTED]
22 dollars. So Field's work, it's my best estimate.

23 Q. Okay.

24 So for Field you're estimating about [REDACTED]
25 dollars, but then for GfK or Knowledge Network, they

1 charged another [REDACTED] dollars?

2 A. It's an estimate. I think it was close
3 to. I'm not sure if it was quite [REDACTED] but that
4 would be a ballpark.

Jay Dep. Tr. (03/20/2015) at 64:13-65:4

Apple Knew of VirnetX's Request

⁴ VirnetX's Position: In light of the other fact discovery Apple intends to provide, VirnetX is re-urging its motion to compel at Dkt. 194, seeking a limited set of documents related to Apple's communications with enterprise customers and mobile device management providers about Apple's VPN On-Demand feature. This discovery is highly relevant to use of the accused feature. Apple's Position: As Apple previously explained, the discovery VirnetX sought in its motion to compel is exceptionally overbroad and burdensome, Dkt. 198, but Apple is continuing to work with VirnetX to avoid the need for the Court to resolve this issue.

Dkt. No. 847 p.7 fn. 4 (Apple and VirnetX's Joint Motion to Amend the Docket Control Order and Discovery Order)

Apple Knew of VirnetX's Request

Counsel,

VirnetX does not believe that discovery, beyond supplementing sales data and the related expert report disclosures, is necessary. That being said in the event additional discovery above and beyond that is going to occur, there are discovery issues that Apple previously refused to provide that should be produced before this upcoming trial. Specifically, materials relevant to VirnetX's motion to compel at Dkt # 194 that generally relates to Apple's work with MDMs. And any other communications that Apple has had with customers or third parties related to VPN on Demand.

Cassady 05/01/2020 Email Re: *VirnetX: Hearing Next Week*

Apple Requested A Discovery Redo

Jason,

Here is our list of proposed fact discovery. We look forward to receiving yours and collaborating on a discovery plan. Let's keep the lines of communication open over the weekend and plan to meet and confer Monday morning. Please let me know what times DO NOT work for you Monday morning and I will send an invite.

▪ **Discovery from VirnetX**

- Updated royalty receipts from Mitel, NEC, Avaya, Aastra, and Siemens
- Any new licenses VirnetX has entered into or efforts to license
- Information regarding Gabriel, including its design, marketing, and sales
- All infringement allegations against third parties since 2018, including assertion letters, complaints, and contentions
- VirnetX's infringement contentions against Mitel, NEC, Avaya, Aastra, and Siemens
- VirnetX's shareholder suit
- Deposition of Kendall Larson

▪ **Discovery from Third Parties**

- Royalty and product information (including reasons why there were no royalty payments, if true) from Mitel, NEC, Avaya, Aastra, and Siemens
- Depositions of the corporate representatives of one or more of Mitel, NEC, Avaya, Aastra, and/or Siemens

▪ **Discovery from Apple**

- Updated licenses, sales, marketing, customer information

Heffernan 05/01/2020 Email Re: *VirnetX: Hearing Next Week*

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Apple's Suggested Custodians Are Insufficient

(1) Nick Thompson

Problems:

- Began working at Apple in August 2018 over 5 years *after* the relevant time period.
- No indication responsible for communicating with MDMs about VPN On Demand.

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Apple's Suggested Custodians Are Insufficient

(2) ios-mdm@apple.com

Problems:

- Created in January 2015 nearly two years *after* the relevant time period.
- No indication this email address is meaningfully used for outside communication with MDMs OR that it will contain any relevant communications or exchanges with MDMs about VPN On Demand.

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Apple's Suggested Custodians Are Insufficient

(3) Apple Care

Problems:

- Not relevant to how Apple communicates with its Enterprise Customers or MDMs.
- Only includes piecemeal feedback (*i.e. brief description of support inquiry and customer, date, status*) from what would be relevant entries entered at the sole discretion of the support representative who created it.

Apple's Expense Never Changes

Apple's Representations During Jan. 6, 2016 Hearing

1. "Over 3400 hours of people time"
2. "4300 hours of machine time"
3. Take "over ten months" to gather
4. "Costs hundreds of thousands of dollars"

June 11, 2020 Declaration of Ali Husain

